

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Customer Number: 31824  
Christopher Robert Bebbington, et al. : Confirmation Number: Not Yet Assigned  
Serial No.: 10/585,149 : Group Art Unit:  
Filed: June 30, 2006 : Examiner: Not Yet Assigned  
For: TRANSACTIVATION SYSTEM FOR MAMMALIAN CELLS

CERTIFICATE OF MAILING UNDER 37 CFR 1.10

"EXPRESS MAIL"

"Express Mail" mailing label number **EB 790884686 US**

Date of Deposit: February 10, 2009

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CHERE ROBINSON

Mail Stop PCT  
Commissioner for Patents  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a **Petition for Withdrawal of Holding of Abandonment**.

- ☒ The Commissioner is hereby authorized to charge payment of any fees associated with this communication to Deposit Account No. 502203, including any filing fees under 37 CFR 1.16 and any processing fees under 37 CFR 1.17.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Andrew A. Kumamoto  
Registration No. 40,690

18191 Von Karman Avenue, Suite 500  
Irvine, California 92612-7108  
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Facsimile: 949.851.9348  
**Date: February 10, 2009**  
MPK 116399-1.073678.0026

Please recognize our Customer No. 31824 as our  
correspondence address.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Customer Number: 31824  
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CHERE ROBINSON

**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT**

Mail Stop PCT  
Commissioner for Patents  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the NOTIFICATION OF ABANDONMENT dated January 22, 2009, Applicants hereby request that the Notification of Abandonment be withdrawn and that prosecution for the application be reopened. (See Manual of Patent Examination Procedure § 711.04(c) (2007).) Petitioner respectfully submits that this NOTIFICATION OF ABANDONMENT appears to have been issued in error because the Notification of Missing Requirements upon which it is based was VACATED six weeks before the date of this NOTIFICATION OF ABANDONMENT, January 22, 2009. In the alternative, Petitioner requests that the NOTIFICATION OF ABANDONMENT be

withdrawn because Applicant did not receive the March 27, 2007, Notification of Missing Requirements.

Applicant wishes to thank Examiner Stemmler for the recommendation that the present Petition to Withdraw Abandonment be filed to remove this erroneous NOTIFICATION OF ABANDONMENT.

### **Statement of Facts**

On December 8, 2008, the Patent Office issued a Decision granting Petitioner's previous Petition for Withdrawal of Abandonment. (Exhibit 1.) The Patent Office held that Petitioner had demonstrated nonreceipt of the Notice of Missing Requirements dated March 26, 2007, and so vacated the Notification of Abandonment. (*Id.*) By this Decision, the Patent Office also VACATED the March 26, 2007, Notification of Missing Requirements. (*Id.*)

The present NOTIFICATION OF ABANDONMENT is the second Applicants has received based on the March 26, 2007, Notice of Missing Requirements. (Exhibit 2.) Applicant first learned of this second NOTIFICATION OF ABANDONMENT upon a check of Private Pair for the above referenced application on February 2, 2009. As noted above, the Notification of Missing Requirements that is the basis for the NOTIFICATION OF ABANDONMENT was vacated by a Patent Office Decision dated December 8, 2008. Applicant had a telephonic interview with Examiner Kidwell regarding the present NOTIFICATION OF ABANDONMENT on February 3, 2009, in which Examiner Kidwell acknowledged that the NOTIFICATION OF ABANDONMENT was issued in error. (Exhibit 3.)

### **Petition for Withdrawal of Holding of Abandonment**

Petitioner respectfully requests that the NOTIFICATION OF ABANDONMENT be withdrawn because it appears to have been issued in error since the December 8, 2008, Decision by

the Patent Office vacated the Notification of Missing Requirements dated March 26, 2007. (Exhibit 1.)

In the alternative, Petitioner requests that the NOTIFICATION OF ABANDONMENT be withdrawn based on the nonreceipt of the Notification of Missing Requirements by the Applicant, as detailed in the Petition to Withdraw Abandonment already of record in this case (and which is incorporated by reference into this Petition to Withdraw Abandonment).

### **Conclusion**

Petitioner submits that the Notification of Missing Requirements was been vacated by the Patent Office in December 2008, and so, cannot form the basis of the present Notification of Abandonment. Also, Petitioner resubmits that Applicants did not receive the Notification of Missing Requirements, and as such, the Petitioner respectfully request that the Notification of Abandonment be withdrawn.

The Commissioner is hereby authorized to charge Deposit Account No. 502203 the amount necessary to cover any fee in connection with this filing and the associated Petition.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Andrew Kumamoto  
Registration No. 40,690

18191 Von Karman Avenue, Suite 500  
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Phone: 650.813.5137 AAK:pab  
Facsimile: 949.851.9348  
**Date: February 10, 2009**

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# EXHIBIT

1



08 DEC 2008

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MCDERMOTT WILL & EMERY LLP  
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SUITE 500  
IRVINE CA 92612-7108

In re Application of :  
BEBBINGTON et al. :  
Application No.: 10/585,149 : DECISION  
PCT No.: PCT/US2004/043830 :  
Int. Filing Date: 30 December 2004 :  
Priority Date: 31 December 2003 :  
Attorney's Docket No.: 073678-0026 :  
For: TRANSACTIVATION SYSTEM FOR :  
MAMMALIAN CELLS :

This decision is in response to applicants' "REQUEST FOR RECONSIDERATION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT", "RENEWAL OF PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT", which was accompanied by, *inter alia*, a master docket report showing all docketed due dates for all USPTO replies received at the correspondence address during the time period March 26, 2007 to June 26, 2007, "Renewal of Petition to Revive for Unavoidable Abandonment", and "Petition to Revive for Unintentional Abandonment", all filed 18 September 2008.

#### **BACKGROUND**

On 30 December 2004, applicants filed international application PCT/US2004/04380, which designated the United States and claimed a priority date of 31 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 July 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 30 June 2006

On 30 June 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 26 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905).

On 27 March 2008, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to timely respond to the Notification mailed 26 March 2007.

On 17 April 2008, applicants submitted a "PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT."

On 25 August 2008, applicants submitted a "SUPPLEMENTAL FILING IN SUPPORT OF PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT," which was accompanied by, *inter alia*, an incoming mail log for the law firm of petitioner.

On 02 September 2008, a decision was mailed properly treating the submissions filed 17 April 2008 and 25 August 2008 as a single petition under 37 CFR 1.181 and a request, in the alternative, that the petition be considered a petition to revive under 37 CFR 1.137(a). The petition under 37 CFR 1.181 was dismissed without prejudice for failing to provide a proper docket report. The petition under 37 CFR 1.137(a) was also dismissed without prejudice.

On 18 September 2008, applicants filed the instant submission.

### DISCUSSION

#### Petition Under 37 CFR 1.181

If applicants can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

As noted in the decision mailed 02 September 2008, items (1) and (2) have been met.

Item (3) has now been met as well. The copy of the docket record mentioned above is sufficient.

#### Petition Under 37 CFR 1.137(a)

Because the petition under 37 CFR 1.181 has been granted, the petition under 37 CFR 1.137(a) is moot.

Petition Under 37 CFR 1.137(b)

Because the petition under 37 CFR 1.181 has been granted, the petition under 37 CFR 1.137(b) is moot.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 26 March 2007 is **VACATED**.

For the reasons set forth above, the NOTIFICATION OF ABANDONMENT mailed 27 March 2008 is **VACATED**.

For the reasons set forth above, the petition under 37 CFR 1.137(a) is **DISMISSED** as **MOOT**.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is **DISMISSED** as **MOOT**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

Daniel Stemmer  
PCT Legal Examiner  
PCT Legal Affairs  
Office of Patent Cooperation Treaty  
Legal Administration  
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Facsimile: (571) 273-0459



# EXHIBIT

## 2



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United States Patent and Trademark Office  
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www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. TICKET NO.
10/585,149	Christopher Robert Bebbington	073678-0026

31824  
MCDERMOTT WILL & EMERY LLP  
18191 VON KARMAN AVE.  
SUITE 500  
IRVINE, CA 92612-7108

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MCDERMOTT WILL & EMERY LLP

INTERNATIONAL APPLICATION NO.	
PCT/US04/3830	
LA. FILING DATE	PRIORITY DATE
12/30/2004	12/31/2003

CONFIRMATION NO. 9929  
371 ABANDONMENT/TERMINATION  
LETTER



Date Mailed: 03/27/2008

NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 03/26/2007 within the time period set therein.

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

PAULETTE R KIDWELL

Telephone: (703) 308-9140 EXT 216



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.				
10/585,149	Christopher Robert Bebbington	073678-0026				
31824 MCDERMOTT WILL & EMERY LLP 18191 VON KARMAN AVE. SUITE 500 IRVINE, CA 92612-7108		INTERNATIONAL APPLICATION NO. PCT/US04/43830				
		<table border="1"><tr><td>I.A. FILING DATE</td><td>PRIORITY DATE</td></tr><tr><td>12/30/2004</td><td>12/31/2003</td></tr></table>	I.A. FILING DATE	PRIORITY DATE	12/30/2004	12/31/2003
I.A. FILING DATE	PRIORITY DATE					
12/30/2004	12/31/2003					

CONFIRMATION NO. 9929

371

ABANDONMENT/TERMINATION  
LETTER



Date Mailed: 01/22/2009

**NOTIFICATION OF ABANDONMENT**

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 03/26/2007 within the time period set therein.

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

PAULETTE R KIDWELL

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# EXHIBIT

3

Docket No.: 073678-0026

EM112182643US

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Customer Number: 31824  
Christopher Robert Bebbington, et al. : Confirmation Number: 9929  
Serial No.: 10/585,149 : Group Art Unit:  
Filed: June 30, 2006 : Examiner: Not Yet Assigned

For: TRANSACTIVATION SYSTEM FOR MAMMALIAN CELLS

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CHERE ROBINSON

Mail Stop Amendment  
Commissioner for Patents  
Office of PCT Operations  
P.O. Box 1450  
Alexandria, VA 22313-1450


Dear Sir:

Transmitted herewith is Summary of Telephonic Interview

☒ The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment, to Deposit Account No. 502203, including any filing fees under 37 CFR 1.16 and any processing fees under 37 CFR 1.17.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

  
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Registration No. 40,960

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Date: February 3, 2009

Please recognize our Customer No. 31824 as our  
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MPK 116399-1.073678.0026

Docket No.: 073678-0026

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 31824
Christopher Robert BEBBINGTON, et al.	:	Confirmation Number: 9929
Serial No.: 10/585,149	:	Group Art Unit:
Filed: June 30, 2006	:	Examiner: Not Yet Assigned

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CHERE ROBINSON

**SUMMARY OF TELEPHONIC INTERVIEW**

Mail Stop PCT  
Commissioner for Patents  
Office of PCT Operations  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The undersigned thanks Examiner Kidwell for the telephonic interview of February 3, 2009. During the interview Applicant inquired regarding the January 22, 2009, NOTIFICATION OF ABANDONMENT in view of the December 8, 2008, Patent Office Decision vacating a similar NOTIFICATION OF ABANDONMENT.<sup>1</sup>

Examiner Kidwell informed Applicant that the January 22, 2009, NOTIFICATION OF ABANDONMENT had been issued in error and would be withdrawn by the Patent Office. Applicant understands that no Petition to Withdraw in response to the January 22, 2009,

<sup>1</sup> The December 8, 2008, Decision also vacated the March 26, 2007 Notification of Missing Requirements that was the basis for both the March 27, 2008 and January 22, 2009, Notification of Abandonments.

NOTIFICATION OF ABANDONMENT is necessary because the Patent Office is sua sponte withdrawing this notification.

Applicant wishes to thank Examiner Kidwell for streamlining this process and rendering it unnecessary for Applicant to file a Petition to Withdraw Abandonment.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Andrew Kumamoto  
Registration No. 40,690

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